IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.301 OF 2005

Dayasagar Gurusiddhappa Mattikalli : Appellant
versus
Smt.Parvatibai Gurusiddhappa
Mattikalli & ors. : Respondents.

Mr.M.D.Angal for the appellant.
Mr.T.S.Ingale for Respondent Nos.1 to 4.

CORAM : D.G.DESHPANDE,J.
DATED : 24TH OCTOBER 2005

ORAL ORDER

1 Heard advocates for the appellant and respondents. The appellant challenges grant of probate to the respondent No.1 who is his mother. Three contentions were raised by the counsel for the appellant before me. Firstly the Will contains contradictory statements about origin and ownership of the property. Secondly, these contradictions show that the testator

was not in a proper state of mind, and, thirdly, according to the learned counsel for the appellant, the scribe of the document has given some admissions which materially affect the validity and legality of the Will.

2 The copy of the Will was given to me by the counsel for the appellant. In the Will the testator has stated as such “I purchased the property myself. There was unregistered partition between myself and my brother on 6.3.1964 and the property came to my share and it is my personal property.” The counsel for the appellant contended that therefore this is the admission of the testator that it was the joint family property but in the same breath he stated that it was self acquired property, therefore, this contradictory statements reveals that the testator was not in a proper state of mind. I do not find any contradiction at all. The testator has stated that he has purchased the property himself but his next assertion that in the partition between himself and his

brother, this property came to his share does not make the property as joint family property nor it is an admission of the testator that it was the joint family property. The aforesaid portion, therefore, does not indicate that the testator was not in a proper state of mind.

3. Thereafter some portion on page 4 of the Will was pointed out me and the deposition of the scribe was read over to me by the counsel for the appellant. That portion of the Will is as under :-

> ''वरील मिळकतीवर माझे पश्चात दुसरे कोणाचा हक्क संबंध नाही सर्व प्रकारे पूर्ण मालकी माझी सौ. पार्वती गुरुसिध्दप्पा मटटीकली हिची एकटेची आहे.''

It means,

> "In the above property after me nobody will have a right excepting my wife Sou.Parvati Gurusiddhappa Mattikalli only."

and the portion of the evidence of scribe regarding the above was also shown to me. The document is dated 27th August 1987 and the scribe was examined in the court in 2004. Therefore, looking to the time span between the date of the document and the date of deposition of the scribe, minor contradictions are bound to be there. The contradictions are inconsequential.

4. Firstly, there is no challenge to the Will regarding its validity and due execution. No contention was raised before me that the Will is forged and fabricated. No sufficient circumstances are pointed out before me nor they appear to have been raised before the trial court. Therefore, there is no merit in this appeal. The appeal is dismissed.

[D.G.DESHPANDE,J]